IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3462 OF 2004

Lalchand R. Dubey
Evergreen Industrial Estate
Watchman's Room, Ground Floor,
Shakti Mill Lane, Mahalaxmi,
Mumbai: 400 011. .....Petitioner

V/s.

M/s.Evergreen Industrial Estate
Shakti Mill Lane, Mahalaxmi,
Mumbai: 400 011.

Shri Ram Gandhi
Managing Partner,
M/s.Evergreen Industrial Estate
Shakti Mill Lane, Mahalaxmi,
Mumbai: 400 011.

Shri.G.D. Tadwalkar,
Hon'ble Member, Industrial Court,
Mumbai, New Administrative
Building, Bandra(E),
Mumbai: 400 051. .....Respondents

Mr.A.S. Kazi for the Petitioner.
Mr.V.P. Vaidya for the Respondents.

CORAM : V.M. KANADE, J.

DATED :29th JUNE, 2007.

JUDGEMENT:-

1. The Petitioner is challenging the order passed by the Industrial

Court in a complaint (ULP)No.603 of 2002, dated 19/10/2004 whereby complaint filed by the Petitioner herein under the provisions of MRTU and PULP Act was dismissed.

2. Brief facts which are relevant for deciding this Writ Petition are as under:-

The Petitioner was employed with the Respondent No.1 as a Watchman cum General Worker. It is case of the Petitioner that he was not paid statutory minimum wages and, therefore, he addressed a letter to the Commissioner of Labour and, thereafter, filed an application bearing application(IDA)No.141/99 U/s.33-C-2 of the Industrial Disputes Act, 1947. Said application is still pending before 6th Labour Court, Mumbai. It is case of the Petitioner that after said application was filed, the Respondents started indulging in various unfair labour practices like stoppage of bonus, ex-gratia payment, etc since 1999. The Petitioner, therefore, filed complaint (ULP) No.603/2002 on 07/06/2002 and the Industrial Court was pleased to grant interim relief restraining the Respondents from terminating services of the

Petitioner without following due process of law. This order was confirmed and direction was given that said order dated 07/06/2002 would continue till final disposal of the complaint. It is case of the Petitioner that in spite of said order being passed by the Industrial Court, services of the Petitioner were terminated on the ground of Petitioner attaining age of superannuation with effect from 11/07/2003. Thereafter, on 11/07/2003, Petitioner filed a fresh application for modification of the interim relief. This application was allowed and the Respondents were restrained from evicting the Petitioner from the premises where he was residing till final disposal of the complaint by order dated 11/07/2003. The Petitioner applied for amendment of the complaint and said application for amendment was allowed. Thereafter, the Petitioner made an application for production of documents that was also partly allowed. Evidence of the Petitioner was recorded and, thereafter, evidence of the Respondents was also recorded and finally the Industrial Court by order dated 19/10/2004 dismissed the complaint. Being aggrieved by the said order, present application has been filed. This Court by order dated 13/12/2004 granted Rule. However, no interim relief was granted.

3. Learned counsel for the Petitioner submitted that the Industrial Court erred in holding that the complaint was not maintainable. He further submitted that the Industrial Court did not consider the order passed by his predecessor dated 20/08/03 and order dated 01/11/03 wherein it was observed by the predecessor of the Industrial Court that the Respondent No.1 establishment was not covered under the provisions of Model Standing Orders. He further submitted that the Industrial Court erred in holding that the issue of subsistence allowance could not be tried by the Industrial Court. He further submitted that the Industrial Court had erred in holding that the action of terminating the services of the Petitioner on the ground of superannuation of services was legal and proper. Admittedly, there was no stipulation on age of retirement. He further submitted that therefore, the Industrial Court' s order of termination of petitioner' sservices was illegal and improper and was passed in contravention of the order dated 21/04/03 passed by the Industrial Court. He further submitted that the Industrial Court also failed to take into consideration deposition of the Respondents' witness who

has stated that there was no retirement age for their employees. He further submitted that the Respondent No.1 had not given notice as contemplated U/s.9A of the Industrial Disputes Act, 1947. In support of this submission, he relied on the number of judgments of the High Courts as also the Apex Court.

1. M.K. Mulki V/s. Keman Pvt. Ltd., and Another (BOM.H.C.)-2002(95)-FLR-567.

2. Bombay Transport & Dock Workers Union v/s. Aryadoot Transport Ltd., & Ors., (H.C.Bom.)-2002-I.CLR-699.

3. Association of Engineering Workers, Mumbai V/s. ATV Ltd., Mumbai and another (H.C. Bom.)-2002(2) LLN-1052.

4. Lokmat Newspapers Pvt. Ltd., V/s. Shankarprasad (S.C.)-1999-II-CLR-433.

5. Hindustan Lever Ltd., V/s. Hindustan Lever Employees Union (H.C. Bom.)-1999-I-CLR-56.

6. Laxmi Vilas Bank Employees Union V/s. P.O. Industrial Tribunal, Madras(H.C. Mad.)-2002(4)-LLN-1118.

7. S.T.P. Ltd., V/s. Second Labour Court 2002-II-LLJ-594 (Cal.H.C.)

8. Mukund Staff and officers Association V/s. Mukund Ltd., & Others (H.C. Bom.)-1999-I-CLR-987.

9. Food Corportion of India Employees Association and Anr. V/s. FCI and Others (H.C. Bom.)-1991-II-LLJ-562.

10. Management of State Bank of India V/s. V.M. Mahapurush(H.C. Karnataka)-1995-I-LLJ-644.

11. Municipal Corporation, Kota V/s. Ram Chandra Shringi(H.C. Rajasthan)-2001(I)-LLN-385.

12. Mumbai Kamgar Sabha V/s. Abdullabhai Faizullabhai and Others(SC)-1976-II-LLJ-186.

13. Warden and Company(India) Ltd., Bombay V/s. Akhil Maharashtra Kamgar Union, Thane 2001-II-CLR-359 (H.C.Bom).

14. The K.C.P. Employee's Association, Madras V/s. The Management of K.C.P. Ltd., Madras and Ors., (SC)-1978 (36)-FLR-217.

4. It is not possible to accept the submissions made by the learned counsel for the Petitioner that there was breach of Section 9A of

the Industrial Disputes Act, 1947 since no notice was given regarding change in service conditions. Termination of the complainant can never amount to any change of service conditions. Secondly merely because establishment has employed another watchman also would not amount to change of service conditions. Ratio of the judgments on which reliance is placed by the learned counsel for the Petitioner on the question of notice of change has to be given U/s.9A of the Industrial Disputes Act, 1947, therefore, would not apply to the facts of the present case and therefore, these judgments are not referred to in this order.

5. In the present case, a complaint has been filed by the Petitioner before the Labour Court U/s.32-C-2 of Industrial Disputes Act, 1947 and since said complaint is pending, those questions cannot be taken into consideration in the present writ petition. In the present case, the Respondents have terminated services of the Petitioner on his attaining age of superannuation. It is an admitted fact that the Complainant has attained more than 63 years as on 19/10/2004. The Complainant has contended that they are no service conditions and even

model standing orders are not applicable to the establishment of the Respondents. If that is the position, it can not be noted as to how the Petitioner can complain of unfair labour practice. Industrial Court has rightly observed that after having reached age of superannuation, he can not claim reinstatement and continuity in service. The Industrial Court has considered all the aspects at length and has given cogent reasons for not accepting submissions made by the learned counsel for the Petitioner. I do not see any reason to interfere with the said finding recorded by the Industrial Court. No case is made out for interfering with the impugned order while exercising writ jurisdiction under Article 226 and 227 of Constitution of India.

6. Learned counsel for the Petitioner has relied on plethora of judgments. There can not be any dispute about the ratio of these judgments. However, ratio of these judgments will not apply to the facts of the present case and therefore, I have not referred to each and every judgment. Hence, Rule is discharged. Interim order, if any, is vacated. Under these circumstances, there shall be no order as to costs.

. Writ Petition is dismissed and disposed of accordingly.

V.M. KANADE, J.